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1	1. DUTY OF JURY
2	Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on
3	the law.
4	These instructions are preliminary instructions to help you understand the principles that
5	apply to civil trials and to help you understand the evidence as you listen to it. You will be
6	allowed to keep this set throughout the trial to which to refer. This set of instructions is not to be
7	taken home and must remain in the jury room when you leave in the evenings. At the end of the
8	trial, I will give you a final set of instructions. It is the final set of instructions which will govern
9	your deliberations.
10	You must not infer from these instructions or from anything I may say or do as indicating
11	that I have an opinion regarding the evidence or what your verdict should be.
12	It is your duty to find the facts from all the evidence in the case. To those facts you will
13	apply the law as I give it to you. You must follow the law as I give it to you whether you agree
14	with it or not. And you must not be influenced by any personal likes or dislikes, opinions,
15	prejudices, or sympathy. That means that you must decide the case solely on the evidence before
16	you. You will recall that you took an oath to do so.
17	In following my instructions, you must follow all of them and not single out some and
18	ignore others; they are all important.
19	Authority, 9th Cir. Civ. Juny Inst. 1.14 (2007)
20	Authority: 9th Cir. Civ. Jury Inst. 1.1A (2007)
21	Given as Requested:
22	Given as Modified:
23	Refused:
24	Withdrawn:
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26	HIDGE OF THE DISTRICT COLUDT
27	JUDGE OF THE DISTRICT COURT
28	sd-581619 1 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

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1	2. CLAIMS AND DEFENSES
2	To help you follow the evidence, I will give you a brief summary of the positions of the
3	parties:
4	Plaintiffs claim that on September 29, 2003, Alaska Airlines caused them to be delayed in
5	their international travel from Vancouver, Canada to Las Vegas, Nevada by diverting Flight 694
6	to Reno, Nevada and by delivering Plaintiffs to the police. Plaintiffs also claim Alaska Airlines
7	employees made certain defamatory statements about Plaintiffs in the days following Flight 694.
8	Plaintiffs have the burden of proving these claims.
9	Alaska Airlines does not dispute that Plaintiffs reached Las Vegas after Flight 694 was
10	scheduled to land. However, Alaska Airlines claims that it is not liable for the delay because it
11	took all necessary measures to prevent such a delay and because Plaintiffs themselves caused the
12	delay. Alaska Airlines also claims it is not liable under an international treaty called the Tokyo
13	Convention, because the Captain of Flight 694 had reasonable grounds to divert the airplane and
14	disembark the Plaintiffs in Reno. Alaska Airlines disputes that any of its employees' statements
15	were defamatory, and asserts that the statements are subject to various defamation privileges that
16	can only be overcome by a showing of malice. Alaska Airlines has the burden of proof only on
17	its affirmative defenses of taking all necessary measures to prevent delay, Plaintiffs' contributory
18	negligence, and Tokyo Convention immunity.
19	Plaintiffs deny Alaska Airlines' affirmative defenses.
20	Authority: 9th Cir. Civ. Jury Inst. 1.2 (2007)
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22	GIVEN:
23	REFUSED:
24	MODIFIED:
25	WITHDRAWN:
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27	JUDGE OF THE DISTRICT COURT
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1		4. WHAT IS NOT EVIDENCE
2	In reac	ching your verdict, you may consider only the testimony and exhibits received into
3	evidence. Cer	tain things are not evidence, and you may not consider them in deciding what the
4	facts are. I wi	ll list them for you:
5	(1)	Arguments and statements by lawyers are not evidence. The lawyers are not
6		witnesses. What they will say in their opening statements and closing arguments,
7		and at other times is intended to help you interpret the evidence, but it is not
8		evidence. If the facts as you remember them differ from the way the lawyers have
9		stated them, your memory of them controls.
10	(2)	Questions and objections by lawyers are not evidence. Attorneys have a duty to
11		their clients to object when they believe a question is improper under the rules of
12		evidence. You should not be influenced by the objection or by the court's ruling or
13		it.
14	(3)	Testimony that has been excluded or stricken, or that you have been instructed to
15		disregard, is not evidence and must not be considered. In addition, sometimes
16		testimony and exhibits are received only for a limited purpose; when I give a
17		limiting instruction, you must follow it.
18	(4)	Anything you may have seen or heard when the court was not in session is not
19		evidence. You are to decide the case solely on the evidence received at the trial.
20	A4la	Wh Circ Circ Issuer Issae 1.7 (2007)
21	Authority: 9	th Cir. Civ. Jury Inst. 1.7 (2007)
22	Given as Rea	uested:
23	Given as Mod	
24	Refused:	
25	Withdrawn:	
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28	sd-581619	JUDGE OF THE DISTRICT COURT 4 CASE NO. CV-S-04-1304-RCJ-CWH
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1	5. EVIDENCE FOR LIMITED PURPOSE
2	Some evidence may be admitted for a limited purpose only.
3	When I instruct you that an item of evidence has been admitted for a limited purpose, you
4	must consider it only for that limited purpose and for no other.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.8 (2007)
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16	Given as Requested:
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1	6. DIRECT AND CIRCUMSTANTIAL EVIDENCE
2	Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as
3	testimony by a witness about what that witness personally saw or heard or did. Circumstantial
4	evidence is proof of one or more facts from which you could find another fact. You should
5	consider both kinds of evidence. The law makes no distinction between the weight to be given to
6	either direct or circumstantial evidence. It is for you to decide how much weight to give to any
7	evidence.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.9 (2007)
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16	Given as Requested:
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	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	7. RULING ON OBJECTIONS
2	There are rules of evidence that control what can be received into evidence. When a
3	lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that
4	it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the
5	question may be answered or the exhibit received. If I sustain the objection, the question cannot
6	be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question,
7	you must ignore the question and must not guess what the answer might have been.
8	Sometimes I may order that evidence be stricken from the record and that you disregard or
9	ignore the evidence. That means that when you are deciding the case, you must not consider the
10	evidence that I told you to disregard.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.10 (2007)
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16	Given as Requested:
17	Given as Modified:
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8. CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it. In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

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1	You must not be biased in favor of or against any witness because of his or her disability,
2	race, sex, religion, occupation, sexual orientation, or national origin.
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12	Authority: 9th Cir. Civ. Jury Inst. 1.11 (2007); CACI 107
13	(2007), 6:161 20.
14	Given as Requested:
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19	JUDGE OF THE DISTRICT COURT
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28	sd-581619 9 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

9. CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via e-mail, text messaging, or any Internet chat room, blog, Web site or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings and a mistrial could result that would

Gase 2:04-cv-01304-MMD-CWH Document 322 Filed 01/31/13 Page 15 of 64 require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately. Authority: 9th Cir. Civ. Jury Inst. 1.12 (2007) Given as Requested: Given as Modified: Refused: Withdrawn: JUDGE OF THE DISTRICT COURT CASE NO. CV-S-04-1304-RCJ-CWH sd-581619

1	10. NO TRANSCRIPT AVAILABLE TO JURY
2	During deliberations, you will have to make your decision based on what you recall of the
3	evidence. You will not have a transcript of the trial. I urge you to pay close attention to the
4	testimony as it is given.
5	If at any time you cannot hear or see the testimony, evidence, questions or arguments, let
6	me know so that I can correct the problem.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.13 (2007)
15	Training: 5th Cir. Gary Insu 1110 (2007)
16	Given as Requested:
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18	Refused:
19	Withdrawn:
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28	sd-581619 12 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	11. TAKING NOTES
2	If you wish, you may take notes to help you remember the evidence. If you do take notes,
3	please keep them to yourself until you and your fellow jurors go to the jury room to decide the
4	case. Do not let note-taking distract you. When you leave, your notes should be left in the jury
5	room. No one will read your notes. They will be destroyed at the conclusion of the case.
6	Whether or not you take notes, you should rely on your own memory of the evidence.
7	Notes are only to assist your memory. You should not be overly influenced by your notes or those
8	of your fellow jurors.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.14 (2007)
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16	Given as Requested:
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	sd-581619 13 CASE NO. CV-S-04-1304-RCJ-CWH ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	12. OUTLINE OF TRIAL
2	Trials proceed in the following way: First, each side may make an opening statement. An
3	opening statement is not evidence. It is simply an outline to help you understand what that party
4	expects the evidence will show. A party is not required to make an opening statement.
5	The plaintiff will then present evidence, and counsel for the defendant may cross-
6	examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-
7	examine.
8	After the evidence has been presented, I will instruct you on the law that applies to the
9	case and the attorneys will make closing arguments.
10	After that, you will go to the jury room to deliberate on your verdict.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.19 (2007)
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16	Given as Requested:
17	Given as Modified:
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	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	13. BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE
2	When a party has the burden of proof on any claim by a preponderance of the evidence, it
3	means you must be persuaded by the evidence that the claim is more probably true than not true.
4	You should base your decision on all of the evidence, regardless of which party presented
5	it.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.3 (2007)
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28	sd-581619 15 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	14. JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION
2	Languages other than English may be used during this trial.
3	The evidence to be considered by you is only that provided through the official court
4	[interpreters] [translators]. Although some of you may know [<i>language to be used</i>], it is
5	important that all jurors consider the same evidence. Therefore, you must accept the English
6 7	[interpretation] [translation]. You must disregard any different meaning.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.16 (2007)
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16	Given as Requested:
17	Given as Modified:
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	sd-581619 16 CASE NO. CV-S-04-1304-RCJ-CWH ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	15. USE OF INTERPRETERS IN COURT
2	You must not make any assumptions about a witness or a party based solely upon the use
3	of an interpreter to assist that witness or party.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.17 (2007)
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16	Given as Requested:
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28	sd-581619 17 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	16. ATTORNEY'S RIGHT TO INTERVIEW WITNESS
2	An attorney has a right to interview a witness for the purpose of learning what testimony
3	the witness will give. The fact that the witness has talked to an attorney and told that attorney
4	what [he] [she] would testify to does not, by itself, reflect adversely on the truth of the testimony
5	of the witness.
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14	Authority: Nevada Civ. Jury Inst. — Evidence 2EV.15 (2011)
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16	Given as Requested:
17	Given as Modified:
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28	sd-581619 18 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	17. BENCH CONFERENCES AND RECESSES
2	From time to time during the trial, it [may become] [became] necessary for me to talk with
3	the attorneys out of the hearing of the jury, either by having a conference at the bench when the
4	jury [is] [was] present in the courtroom, or by calling a recess. Please understand that while you
5	[are] [were] waiting, we [are] [were] working. The purpose of these conferences is not to keep
6	relevant information from you, but to decide how certain evidence is to be treated under the rules
7	of evidence and to avoid confusion and error.
8	Of course, we [will do] [have done] what we [can] [could] to keep the number and length
9	of these conferences to a minimum. I [may] [did] not always grant an attorney's request for a
10	conference. Do not consider my granting or denying a request for a conference as any indication
11	of my opinion of the case or of what your verdict should be.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.18 (2007)
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16	Given as Requested:
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1	18. STIPULATIONS OF FACT
2	The parties have agreed to certain facts that will be read to you. You should therefore
3	treat these facts as having been proved:
4	[INSERT STIPULATIONS OF FACT.]
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13 14	Authority: 9th Cir. Civ. Jury Inst. 2.2 (2007)
15	Authority. 7th Cir. Sury Hist. 2.2 (2007)
16	Given as Requested:
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28	sd-581619 20 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	19. DEPOSITION IN LIEU OF LIVE TESTIMONY
2	A deposition is the sworn testimony of a witness taken before trial. The witness is placed
3	under oath to tell the truth and lawyers for each party may ask questions. The questions and
4	answers are recorded. [When a person is unavailable to testify at trial, the deposition of that
5	person may be used at the trial.]
6	The deposition of [witness] was taken on [date]. You should consider deposition
7	testimony, presented to you in court in lieu of live testimony, insofar as possible, in the same way
8	as if the witness had been present to testify.
9	[Do not place any significance on the behavior or tone of voice of any person reading the
10	questions or answers.]
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14	Authority: 9th Cir. Civ. Jury Inst. 2.4 (2007)
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16	Given as Requested:
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	sd-581619 21 CASE NO. CV-S-04-1304-RCJ-CWH

1	20. IMPEACHMENT EVIDENCE—WITNESS
2	The evidence that a witness [e.g., has been convicted of a crime, lied under oath on a prior
3	occasion, etc.] may be considered, along with all other evidence, in deciding whether or not to
4	believe the witness and how much weight to give to the testimony of the witness and for no other
5	purpose.
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4	Authority: 9th Cir. Civ. Jury Inst. 2.8 (2007)
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	sd-581619 22 CASE NO. CV-S-04-1304-RCJ-CWH

1	21. USE OF INTERROGATORIES OF A PARTY
2	Evidence [will now be] [was] presented to you in the form of answers of one of the parties
3	to written interrogatories submitted by the other side. These answers [have been] [were] given in
4	writing and under oath, before the actual trial, in response to questions that were submitted in
5	writing under established court procedures. You should consider the answers, insofar as possible,
6	in the same way as if they were made from the witness stand.
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14	Authority: 9th Cir. Civ. Jury Inst. 2.10 (2007)
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16	Given as Requested:
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20	sd-581619 23 CASE NO. CV-S-04-1304-RCJ-CWH
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1	22. REQUESTS FOR ADMISSIONS
2	As permitted by law, the parties served upon each other a written request for the
3	admission of the truth of certain matters of fact. You will regard as being conclusively proved all
	such matters of fact which were expressly admitted by the parties or which the parties failed to
4	
5	deny.
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13	A (I '4 N I C' I I 4 E '1 AFN 10 (2011)
14	Authority: Nevada Civ. Jury Inst. — Evidence 2EV.10 (2011)
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16	Given as Requested:
17	Given as Modified:
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28	sd-581619 24 CASE NO. CV-S-04-1304-RCJ-CWH
	sd-581619 24 CASE NO. CV-S-04-1304-RCJ-CWH ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	23. EXPERT OPINION
2	Some witnesses, because of education or experience, are permitted to state opinions and
3	the reasons for those opinions.
4	Opinion testimony should be judged just like any other testimony. You may accept it or
5	reject it, and give it as much weight as you think it deserves, considering the witness's education
6	and experience, the reasons given for the opinion, and all the other evidence in the case.
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14	Authority: 9th Cir. Civ. Jury Inst. 2.11 (2007)
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16	Given as Requested:
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21	JUDGE OF THE DISTRICT COURT
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28	sd-581619 25 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	24. EXPERT WITNESS: GENERAL (ALTERNATE)
2	Witnesses who have special knowledge, skill, experience, training, or education in a
3	particular subject have testified to certain opinions. This type of witness is referred to as an
4	expert witness. In determining what weight to give any opinions expressed by an expert witness,
5	you should consider the qualifications and believability of the witness, the facts or materials upon
6	which each opinion is based, and the reason for each opinion.
7	An opinion is only as good as the facts and reasons on which it is based. If you find that
8	any such fact has not been proved, or has been disproved, you must consider that in determining
9	the value of the opinions. Likewise, you must consider the strengths and weaknesses of the
10	reason on which it is based.
11	You must resolve any conflict in the testimony of the witnesses, weighing each of the
12	opinions expressed against the others, taking into consideration the reasons given for the opinion,
13	the facts relied upon by the witness, his or her relative credibility and his or her special
14	knowledge, skill, experience, training and education.
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16	Authority: Nevada Civ. Jury Inst. — Expert Witness 3EX.2 (2011)
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18	Given as Requested:
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23	JUDGE OF THE DISTRICT COURT
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25.	EXPERT WITNESS: RELIANCE UPON
MAT'	TERS NOT ADMITTED IN EVIDENCE

2	MATTERS NOT ADMITTED IN EVIDENCE
3	An expert witness has testified about [his] [her] reliance upon [books] [treatises] [articles]
4	[statements] that have not been admitted into evidence. Reference by the expert witness to this
5	material is allowed so that the expert witness may tell you what [he] [she] relied upon to form
6	[his] [her] opinions. You may not consider the material as evidence in this case. Rather, you may
7	only consider the material to determine what weight, if any, you will give to the expert's
8	opinions.
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14	Authority: Nevada Civ. Jury Inst. — Expert Witness 3EX.3 (2011)
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16	Given as Requested:
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28	sd-581619 27 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	26. EXPERT WITNESS: HYPOTHETICAL QUESTION
2	A hypothetical question has been asked of an expert witness. In a hypothetical question,
3	the expert witness is told to assume the truth of certain facts, and the expert witness is asked to
4	give an opinion based upon those assumed facts. You must decide if all of the facts assumed in
5	the hypothetical question have been established by the evidence. You can determine the effect of
6	that admission upon the value of the opinion.
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14	Authority: Nevada Civ. Jury Inst. — Expert Witness 3EX.4 (2011)
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16	Given as Requested:
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	sd-581619 28 CASE NO. CV-S-04-1304-RCJ-CWH

1	27. CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE
2	Certain charts and summaries not received in evidence [may be] [have been] shown to you
3	in order to help explain the contents of books, records, documents, or other evidence in the case.
4	They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts
5	or figures shown by the evidence in the case, you should disregard these charts and summaries
6	and determine the facts from the underlying evidence.
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14	Authority: 9th Cir. Civ. Jury Inst. 2.12 (2007)
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16	Given as Requested:
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1	28. CHARTS AND SUMMARIES IN EVIDENCE
2	Certain charts and summaries [may be] [have been] received into evidence to illustrate
3	information brought out in the trial. Charts and summaries are only as good as the underlying
4	evidence that supports them. You should, therefore, give them only such weight as you think the
5	underlying evidence deserves.
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14	Authority: 9th Cir. Civ. Jury Inst. 1.18 (2007)
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16	Given as Requested:
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	sd-581619 30 CASE NO. CV-S-04-1304-RCJ-CWH ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

29.	SPECIAL JURY INSTRUCTION NO. 1: INTERFERENCE WITH FLIGHT
	CREW MEMBERS AND ATTENDANTS

An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, or attempts or conspires to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life. **Authority: 49 U.S.C. § 46504** Given as Requested: Given as Modified: Refused: Withdrawn: JUDGE OF THE DISTRICT COURT

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1	30. SPECIAL JURY INSTRUCTION NO. 2: PROHIBITION ON INTERFERENCE WITH CREWMEMBERS
2	No person may assault, threaten, intimidate, or interfere with a crewmember in the
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4	performance of the crewmember's duties aboard an aircraft being operated.
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13	Authority: 14 C.F.R. § 91.11
14	Authority. 11 C.1. ix. g > 1.11
15	Given as Requested:
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	sd-581619 32 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1 2	31. SPECIAL JURY INSTRUCTION NO. 3: WARSAW CONVENTION DELAY CLAIM
3	Alaska Airlines is liable for Plaintiffs' damage, if any, occasioned by delay in their
4	transportation by air. However, Alaska Airlines is not liable if it proves that Alaska Airlines and
5	its agents took all necessary measures to avoid the damage or that it was impossible for Alaska
6	Airlines to take such measures.
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14	Authority: Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929 ("Warsaw Convention"), art. 19, 49 Stat. 3000, T.S.
15	No. 876, 137 L.N.T.S. 11, reprinted in 49 U.S.C. § 40105, as amended at The Hague in 1955;
16	Warsaw Convention, art. 20, as amended by Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air (1975).
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18	Given as Requested:
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28	sd-581619 33 CASE NO. CV-S-04-1304-RCJ-CWH

1	32.	SPECIAL JURY INSTRUCTION NO. 4: PLAINTIFFS' CONTRIBUTORY NEGLIGENCE				
2	If Alaska Airlines proves that the damage from the delay was caused by or contributed to					
4	by the negligence of the Plaintiffs, you may exonerate Alaska Airlines wholly or partly from its					
5	liability.					
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13	Authority	: Warsaw Convention, Art. 21(1), as amended by Montreal Protocol No. 4.				
14	1 xutiloi ity	warsaw Convention, Art. 21(1), as amended by Montreal Frotocol No. 4.				
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	sd-581619	34 CASE NO. CV-S-04-1304-RCJ-CWH				

1	33.	SPECIAL JURY INSTRUCTION NO. 5: TOKYO CONVENTION DEFENSE			
2	A	As the aircraft commander, Captain Swanigan may, when he has reasonable grounds to			
3	believe tl	hat a person has committed, or is about to commit, an act which may or does jeopardize			
4 5	the safety of the aircraft or persons or property therein, or which may or does jeopardize good				
6	order or	discipline on board the aircraft, impose upon such person reasonable measures including			
7	restraint	which are necessary:			
8	(8	a) to protect the safety of the aircraft, or of persons or property therein;			
9	(t	b) to maintain good order and discipline on board; or			
10	(0	c) to enable him to deliver such persons to competent authorities or to disembark the			
11	passenge	er.			
12 13	If	f Captain Swanigan acted with such reasonable grounds during Flight 694 and imposed			
14	upon Pla	sintiffs such reasonable measures, then Alaska Airlines is not liable to Plaintiffs.			
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16		ty: Convention on Offences and Certain Other Acts Committed On Board Aircraft, t Tokyo, on 14 September 1963 (Tokyo Convention), arts. 1, 6, 10.			
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18	Given as	Requested:			
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	sd-581619	35 CASE NO. CV-S-04-1304-RCJ-CWH			

1 2	34. SPECIAL JURY INSTRUCTION NO. 6: AUTHORITY OF PILOT IN COMMAND			
3	Under Federal Aviation Regulation 14 C.F.R. § 91.3(a), the pilot in command of an			
4	aircraft is directly responsible for, and is the final authority as to, the operation of the aircraft.			
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14	Authority: 14 C.F.R. § 91.3(a).			
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16	Given as Requested:			
17	Given as Requested:			
18	Given as Modified:			
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	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS			

1 2	35. SPECIAL JURY INSTRUCTION NO. 7: RESPONSIBILITY OF PILOT IN COMMAND			
3	Under 14 C.F.R. § 121.537, the pilot in command of an aircraft is, during flight time, in			
4	command of the aircraft and crew and is responsible for the safety of passengers, crewmembers,			
5	cargo, and the aircraft. The pilot in command has full control and authority in the operation of			
6	the aircraft and over other crewmembers and their duties during flight time.			
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9	Authority: 14 C.F.R. § 121.537(d)			
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11	Given as Requested:			
12	Given as Modified:			
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	sd-581619 37 CASE NO. CV-S-04-1304-RCJ-CWH			
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS			

1	36. SPECIAL JURY INSTRUCTION NO. 8: CAPTAIN'S EMERGENCY DECISION
2	The Captain of an airplane must be able to act decisively in an emergency and, in doing
3	so, rely on communications from his crew.
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14	Authority: Eid v. Alaska Airlines, Inc., 621 F.3d 858, 872 (9th Cir. 2010).
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16	Given as Requested:
17	Given as Modified:
18	Refused:
19	Withdrawn:
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	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	37. SPECIAL JURY INSTRUCTION NO. 9: RIGHT TO REFUSE TRANSPORTATION
2	An airline is justified in refusing to transport a passenger if that transportation, in the
3	opinion of the pilot, would be inimical to the safety of the flight. In judging the legality of a
5	denial of passage, you must look to the opinion of the airline pilot, and that opinion controls, if it
6	is a reasonable opinion based on the facts and circumstances as they appear to the pilot at the time
7	that the decision was made. It is not what is reasonable in the after-light, but what appears to be
8	reasonable at the time.
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14	Authority: Cordero v. CIA Mexicana de Aviacion, 681 F.2d 669, 671 n.2 (9th Cir. 1982)
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16	Given as Requested:
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1	38. SPECIAL JURY INSTRUCTION NO. 10: DELAY DAMAGES
2	Damages for "delay in transportation" under Article 19 of the Warsaw Convention must
3	be directly tied to the Plaintiffs' late arrival at their destination airport. Such damages include,
4	but are not necessarily limited to, the cost of making alternative travel arrangements, the cost
5	associated with the amount of time lost due to the delay, and inconvenience caused by the delay.
7	You may not award delay damages for emotional distress or reputational injury, if any, that may
8	have been occasioned by the delay.
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14	Authority: <i>Smith v. Peidmont Aviation, Inc.</i> , 567 F.2d 290, 292 (5th Cir.1978) (holding that cost of making alternative travel arrangements was one type of delay damage contemplated by the
15	Warsaw Convention); <i>Lopez v. E. Airlines, Inc.</i> , 677 F. Supp. 181, 183 (S.D.N.Y. 1988) (holding that the plaintiffs' loss of time was another type of delay damage contemplated under the Warsaw
16	Convention); <i>Daniel v. Virgin Atl. Airways, Ltd.</i> , 58 F. Supp. 2d 986, 992 (N.D. Cal. 1998) (holding that damages for "inconvenience" were another type of damages cognizable under the
17	Warsaw Convention, but that damages for emotional distress were not); <i>Lee v. Am. Airlines, Inc.</i> , 355 F.3d 386, 387 (5th Cir. 2004) (damages for emotional/mental distress not recoverable under
18	Article 19 of the Warsaw Convention); <i>Trans World Airlines, Inc. v. Christophel</i> , 500 S.W.2d 409, 411 (Ky. Ct. App. 1973) (rejecting a claim for mental anguish damages under Article 19 of
19	the Warsaw Convention).
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21	Given as Requested:
22	Given as Modified:
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	sd-581619 40 CASE NO. CV-S-04-1304-RCJ-CWH

1	39.	SPECIAL JURY II	NSTRUCTION NO. 11:	PREEMPTED DAMAGES
2	Capta	in Swanigan's stateme	ents to the Reno Police at	the Reno airport were made during
3	the process of	f disembarking the pla	nintiffs from Flight 694. P	Plaintiffs cannot recover any
4	damages, other	er than those directly	tied to their delay, related	to Captain Swanigan's report to the
5	Reno Police.			
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14	that the pilot'	s statements to the po	lice were part of the disen	(9th Cir. 2010) ("It is thus fair to say abarkation process. Considering the
15	intended mea	ning of Article 17,' w	e conclude that the crew's	against the background of the report to the police was covered by
16			549 F.2d 1256, 1257, 126	vention, art. 17; <i>Maugnie v.</i> 2 (9th Cir.1977).
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18	-	uested:		
19 20	Given as Moo	dified:		
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28	sd-581619		41	CASE NO. CV-S-04-1304-RCJ-CWH

1	40. SP	ECIAL JURY INSTRUCTION NO. 12: DELAY DAMAGES CAP
2	Unless Plai	ntiffs have proven that Alaska Airlines' actions constituted "willful
3	misconduct," any o	damages you award Plaintiffs under Article 19 of the Warsaw Convention may
4	not exceed 16,600	Special Drawing Rights ("SDR") per Plaintiff. An SDR is the monetary unit
5	of the International	l Monetary Fund. An award of 16,600 SDRs is the equivalent of
7	approximately \$25	,500.
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14	Rules Relating to I	ional Protocol No. 2 to amend the Convention for the Unification of Certain international Carriage by Air signed at Warsaw on 12 October 1929 as
15 16	amended by the Pr 2097 U.N.T.S 69.	otocol done at The Hague on 28 September 1955, art. 22(1), Sept. 25, 1975,
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18	Given as Requested	d:
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23		JUDGE OF THE DISTRICT COURT
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1	41 CDECLAL HIDV INSTRUCTION NO. 12. WHILE HE MISCONDUCT
	41. SPECIAL JURY INSTRUCTION NO. 13: WILLFUL MISCONDUCT
2	In order to prove "willful misconduct," Plaintiffs must prove that Alaska Airlines intended
3	to cause Plaintiffs' damages, or that Alaska Airlines acted recklessly with knowledge that damage
4	to Plaintiffs would probably result.
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14	Authority: Montreal Protocol No. 4; <i>Carey v. United Airlines</i> , 255 F.3d 1044, 1050 (9th Cir. 2001).
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	sd-581619 43 CASE NO. CV-S-04-1304-RCJ-CWH ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	42. DEFAMATORY COMMUNICATION: DEFINITION
2	A communication is defamatory if it tends so to harm the reputation of the plaintiff as to
3	lower him or her in the estimation of the community or to deter third persons from associating or
4	dealing with him or her.
5	Words or conduct or the combination of words and conduct can communicate defamation.
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14	Authority: Nevada Civ. Jury Inst. — Intentional Torts 6IT.10 (2011)
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21	JUDGE OF THE DISTRICT COURT
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28	sd-581619 44 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	43.	SPECIAL JURY INSTRUCTION NO. 14: DEFAMATION ELEMENTS
2	In o	rder to prove their defamation claim, Plaintiffs must demonstrate that Alaska Airlines
3	made (1) a	false and defamatory statement of fact concerning the Plaintiffs; (2) that the statement
4	was publisł	ned to a third person; (3) that Alaska Airlines was at least negligent in making the
5	statement; a	and (4) that Plaintiffs suffered actual or presumed damages.
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14	demonstrat	Pope v. Motel 6, 114 P.3d 277, 282 (Nev. 2005) ("A defamation claims requires ing (1) a false and defamatory statement of fact by the defendant concerning the
15	•	emphasis added) <i>Pegasus v. Reno Newspapers, Inc.</i> , 57 P.3d 82, 87 (Nev. 2002) ts of opinion cannot be defamatory").
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17 18	Given as R	equested:
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23		JUDGE OF THE DISTRICT COURT
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28	sd-581619	45 CASE NO. CV-S-04-1304-RCJ-CWH

1	44. SPECIAL JURY INSTRUCTION NO. 15: DEFAMATION DEFENSES
2	A true statement is not defamatory. A statement of opinion is not defamatory.
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13	Authority: Pope v. Motel 6. 114 P.3d 277, 282 (Nev. 2005) ("A defamation claims requires
14	Authority: Pope v. Motel 6, 114 P.3d 277, 282 (Nev. 2005) ("A defamation claims requires demonstrating (1) a <i>false</i> and defamatory statement of fact by the defendant concerning the plaintiff") (emphasis added) Pegasus v. Reno Newspapers, Inc., 57 P.3d 82, 87 (Nev. 2002)
15	("Statements of opinion cannot be defamatory").
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17	Given as Requested:
18	Given as Modified:
19	Refused:
20	Withdrawn:
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22	JUDGE OF THE DISTRICT COURT
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20	sd-581619 46 CASE NO. CV-S-04-1304-RCJ-CWH

1 2	45. SPECIAL JURY INSTRUCTION NO. 16: CLAIMS SUBJECT TO LAW ENFORCEMENT REPORTING PRIVILEGE
3	Plaintiffs' following defamation claims are subject to the law enforcement reporting
4	privilege:
5	
6	• Plaintiffs' [second claim for relief] concerning Frank Raymond's e-mail to the Federal Air
7	Marshalls.
8	• Plaintiffs' [eighth and ninth claims for relief] concerning Captain Majer's Chief Pilot
9	Newsletter.
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13 14	Authority: Pope v. Motel 6, 114 P.3d 277, 284 (Nev. 2005).
15	Authority. 1 ope v. Motet 6, 1141.3u 277, 204 (Nev. 2003).
16	Given as Requested:
17	Given as Modified:
18	Refused:
19	Withdrawn:
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21	JUDGE OF THE DISTRICT COURT
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27 28	
20	sd-581619 47 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	46. SPECIAL JURY INSTRUCTION NO. 17: CLAIMS SUBJECT TO
2	INTRACORPORATE COMMUNICATIONS PRIVILEGE
3	Plaintiffs' following defamation claims are subject to the law enforcement reporting
4	privilege:
5	 Plaintiffs' [fifth claim for relief] concerning Angela Kelly's e-mail to Mary Ryding and
6	John Severski.
7	
8	Plaintiffs' [sixth claim for relief] concerning Mary Ryding's email to John Severski and
9	Angela Kelly.
10	 Plaintiffs' [seventh claim for relief] concerning Dennis Mellen's e-mail to Angela Kelly.
11	
12	Plaintiffs' [eighth and ninth claims for relief] concerning Captain Majer's Chief Pilot
13 14	Newsletter.
15	Authority: Pope v. Motel 6, 114 P.3d 277, 284 (Nev. 2005).
16	114thority: 1 ope v. Motet 6, 11 11.54 277, 26 1 (1001. 2005).
17	Given as Requested:
18	Given as Modified:
19	Refused:
20	Withdrawn:
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22	JUDGE OF THE DISTRICT COURT
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	sd-581619 48 CASE NO. CV-S-04-1304-RCJ-CWH ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1 2	47.	SPECIAL JURY INSTRUCTION NO. 18: CLAIMS SUBJECT TO COMMON INTEREST PRIVILEGE
3		Plaintiffs' following defamation claims are subject to the common interest privilege:
4	•	Plaintiffs' [second claim for relief] concerning Frank Raymond's e-mail to the Federal Air
5		Marshalls.
6		
7	•	Plaintiffs' [fifth claim for relief] concerning Angela Kelly's e-mail to Mary Ryding and
8		John Severski.
9	•	Plaintiffs' [sixth claim for relief] concerning Mary Ryding's email to John Severski and
10		Angela Kelly.
11 12		
13	•	Plaintiffs' [seventh claim for relief] concerning Dennis Mellen's e-mail to Angela Kelly.
14	•	Plaintiffs' [eighth and ninth claims for relief] concerning Captain Majer's Chief Pilot
15		Newsletter.
16		
17	Autho	ority: Circus Circus Hotels, Inc. v. Witherspoon, 657 P.2d 101, 105 (Nev. 1983) (qualified
18	privilege arises under Nevada law when publication of a statement is made to persons sharing a	
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20	Given	as Requested:
21	Given	as Modified:
22	Refuse	ed:
23	Withd	rawn:
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25		JUDGE OF THE DISTRICT COURT
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	sd-5816	619 CASE NO. CV-S-04-1304-RCJ-CWH

1	48. SPECIAL JURY INSTRUCTION NO. 19: COMMON INTEREST PRIVILEGE
2	Unless Plaintiffs have shown that Alaska Airlines acted with malice in fact, any statement
3	the court has found to have been made by Alaska Airlines to a person or entity with a common
4	interest in maintaining flight safety and security cannot be defamatory because it is protected by
5	the common interest privilege.
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13	Authority: Circus Circus Hotels, Inc. v. Witherspoon, 657 P.2d 101, 105 (Nev. 1983) (qualified
14	privilege arises under Nevada law when publication of a statement is made to persons sharing a common interest).
15	
16	Given as Requested:
17 18	Given as Modified:
19	Refused:
20	Withdrawn:
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22	JUDGE OF THE DISTRICT COURT
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	sd-581619 50 CASE NO. CV-S-04-1304-RCJ-CWH

49.	SPECIAL JURY INSTRUCTION NO. 20: INTRA-CORPORATE COMMUNICATIONS PRIVILEGE
Unless	Plaintiffs have shown that Alaska Airlines acted with malice in fact, any statement
the court has fo	ound to have been made solely between Alaska Airlines' agents and/or employees
in the regular o	course of Alaska Airlines' business cannot be defamatory because it is protected by
the intra-corpo	orate communications privileges.
Authority: P	Pope v. Motel 6, 114 P.3d 277, 284 (Nev. 2005).
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Given as Requ	
Given as Modi	ified:
Refused:	
Withdrawn:	
	JUDGE OF THE DISTRICT COURT
sd-581619	51 CASE NO. CV-S-04-1304-RCJ-CWH ALASKA AIRLINES INC 'S PROPOSED HIRY INSTRUCTIONS

1	50. SPECIAL JURY INSTRUCTION NO. 21: LAW ENFORCEMENT REPORTING
2	PRIVILEGE
3	Unless Plaintiffs have shown that Alaska Airlines acted with malice in fact, any statement
4	the court has found to have been made by Alaska Airlines to a person or entity involved in law
5	enforcement cannot be defamatory because it is protected by the law enforcement reporting
6	privilege.
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14	Authority: Pope v. Motel 6, 114 P.3d 277, 284 (Nev. 2005).
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16	Given as Requested:
17	Given as Modified:
18	Refused:
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21	JUDGE OF THE DISTRICT COURT
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28	sd-581619 52 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

1	51.	SPECIAL JURY INSTRUCTION NO. 22: MALICE IN FACT DEFINITION
2	M	alice in fact is a stringent standard proven by demonstrating that a statement is
3	published	with knowledge that it was false or with reckless disregard for its truth.
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13	A with a with	v. Donov. Motal 6, 114 D 2d 277, 292 (Nav. 2005) ("Actual malice is a stringent
14	standard t	y: Pope v. Motel 6, 114 P.3d 277, 283 (Nev. 2005) ("Actual malice is a stringent hat is proven by demonstrating that 'a statement is published with knowledge that it was ith reckless disregard for its veracity."")
15	raise of w	in reckiess disregard for its veracity.
16	Given as l	Requested:
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21		JUDGE OF THE DISTRICT COURT
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28	sd-581619	53 CASE NO. CV-S-04-1304-RCJ-CWH
	5u-201017	JJ CASE NO. CV-5-04-1304-RCJ-CWH

DAMAGES: LOST PROFITS Lost profits resulting from a breach of contract may be awarded as damages if the nature

of the contract, the performance of similar contracts, a record of past profits of an established enterprise, or other evidence provides a valid basis for determining future profits with reasonable certainty. Future profits are not inherently speculative and are an appropriate measure of damages so long as the evidence provides a basis for determining, with reasonable certainty, what the profits would have been had the contract not been breached.

If the evidence permits an award of lost profits, gross profits lost should be awarded if the expenses of the party seeking damages remained constant and there is no evidence demonstrating that they saved any expenses by not having to render a return performance due to another party's breach of contract. On the other hand, an award of net profits lost rather than gross profits lost is proper where the evidence demonstrates that overhead and/or other expenses were reduced as a result of another party's breach of contract.

Authority: Nevada Civ. Jury Inst. — Contracts CN.47 (2011)

17 Given as Requested: _____

18 Given as Modified: _____

19 Refused:

20 Withdrawn:

JUDGE OF THE DISTRICT COURT

sd-581619

CASE NO. CV-S-04-1304-RCJ-CWH

53	DAMAGES: UNCERTAINTY AS TO AMOUNT
A party seekir	ng damages has the burden of proving both that they did, in fact, suffer
injury and the amoun	t of damages resulting from that injury. The amount of damages need not be
proved with mathema	atical exactitude, but the party seeking damages must provide an evidentiary
basis for determining	a reasonably accurate amount of damages. There is no requirement that
absolute certainty be	achieved; once evidence establishes that the party seeking damages did, in
fact, suffer injury, sor	me uncertainty as to the amount of damages is permissible. However, even
if it is provided by an	expert, testimony that constitutes speculation not supported by evidence is
not sufficient to provi	ide the required evidentiary basis for determining a reasonably accurate
award of damage.	
Authority: Nevada	Civ. Jury Inst. — Contracts CN.48 (2011)
Given as Requested:	
Given as Modified:	
Refused:	
Withdrawn:	
	JUDGE OF THE DISTRICT COURT

sd-581619

1	54. DUTY TO DELIBERATE
2	When you begin your deliberations, you should elect one member of the jury as your
	presiding juror. That person will preside over the deliberations and speak for you here in court.
	You will then discuss the case with your fellow jurors to reach agreement if you can do
	so. Your verdict must be unanimous.
	Each of you must decide the case for yourself, but you should do so only after you have
	considered all of the evidence, discussed it fully with the other jurors, and listened to the views of
	your fellow jurors.
	Do not hesitate to change your opinion if the discussion persuades you that you should.
	Do not come to a decision simply because other jurors think it is right.
	It is important that you attempt to reach a unanimous verdict but, of course, only if each of
	you can do so after having made your own conscientious decision. Do not change an honest
	belief about the weight and effect of the evidence simply to reach a verdict.
	Authority: 9th Cir. Civ. Jury Inst. 3.1 (2007)
	Given as Requested:
	Given as Modified:
	Refused:
	Withdrawn:
	JUDGE OF THE DISTRICT COURT
	sd-581619 56 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

55. COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the [marshal] [bailiff], signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

Authority: 9th Cir. Civ. Jury Inst. 3.2 (2007)

Given as Requested: _____

17 Given as Modified: _____

18 Refused: _____

19 Withdrawn: _____

JUDGE OF THE DISTRICT COURT

JUDGE OF THE DISTRICT COURT
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sd-581619 57 CASE NO. CV-S-04-1304-RCJ-CWH

1	56. RETURN OF VERDICT
2	A verdict form has been prepared for you. [Any explanation of the verdict form may be
3	given at this time.] After you have reached unanimous agreement on a verdict, your presiding
4	juror will fill in the form that has been given to you, sign and date it, and advise the court that you
5	are ready to return to the courtroom.
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14	Authority: 9th Cir. Civ. Jury Inst. 3.3 (2007)
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16	Given as Requested:
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28	sd-581619 58 CASE NO. CV-S-04-1304-RCJ-CWH
	ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS

Gase 2:04-cv-01304-MMD-CWH Document 322 Filed 01/31/13 Page 63 of 64 Respectfully submitted, Dated: January 31, 2013 MORRISON & FOERSTER LLP William V. O'Connor, Jr. William V. O'Connor, Jr. Attorneys for Defendant ALASKA AIRLINES, INC. sd-581619 CASE NO. CV-S-04-1304-RCJ-CWH

CERTIFICATE OF SERVICE The undersigned hereby certifies that on January 31, 2013, a true and correct copy of the foregoing DEFENDANT ALASKA AIRLINES, INC.'S PROPOSED JURY **INSTRUCTIONS** was transmitted electronically to the Electronic Filing System of the United States District Court for the District of Nevada, constituting service of the filed document, on all Filing Users, all of whom are believed to have consented to electronic service. Executed on January 31, 2013, at San Diego, California. /s/ William V. O'Connor, Jr. William V. O'Connor, Jr. sd-581619 CASE NO. CV-S-04-1304-RCJ-CWH